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Executive Director
Federal Regulatory Matters

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

NYNEX

EX PARTE OR LATE FILED

June 12, 1992

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Ex Parte Presentation in CC Docket Nos.
91-141 and 92-13

Dear Ms. Searcy:

This letter is in response to the ex parte filing made by Metropolitan Fiber Systems, Inc. ("MFS") on May 27, 1992 in Docket 91-141. The NYNEX Telephone Companies are preparing a point-by-point rebuttal to MFS' pleading. The purpose of this letter is to summarize our response to MFS' allegations.

MFS claims that the LECs have been lowering their prices to predatory levels in anticipation of expanded interconnection. This is a serious charge. Yet, its massive filing rests on a simplistic analysis of pricing practices that were in place well before the Commission's proposal to require expanded interconnection. The NYNEX Telephone Companies have offered DS3 volume and term discounts since early 1989, and they introduced shared use of Switched Access on Special Access lines pursuant to a 1984 Commission order. MFS' primary "evidence" of below-cost pricing is the fact that the LECs charge less for DS1 circuits that are "hubbed," or multiplexed, onto DS3 circuits than they charge for DS1 point-to-point circuits. However, multiplexing has been an option since 1985 for combining Voice Grade on DS1 service and since 1989 for DS1 on DS3. Multiplexing is nothing more or less than unbundling; it allows an access customer to combine Special Access rate elements as it chooses in order to obtain the lowest possible rate. Indeed, this is exactly what the CAPs seek to accomplish by collocation; to multiplex large numbers of the NTCs' DS1 circuits from end user premises onto MFS' low-cost DS3 fiber facilities to interexchange carrier points of presence.

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MFS never substantiates its claims that the LECs have lowered their Special Access rates in an attempt to preempt market entry by the competitive access providers ("CAPs"). Since the end of 1989, the NYNEX Telephone Companies have reduced their DS1 and DS3 High Capacity rates by between 8 and 22 percent, while they have reduced their Switched Access rates by between 3 and 19 percent. Thus, the reductions for High Capacity Special Access rates are not out of line with the general reduction in access charges.

In arguing that DS3 services to an IXC POP should be priced no lower than DS1 point-to-point services, MFS ignores the cost data that the NYNEX Telephone Companies filed with their last rate of return annual access tariff filing. These data demonstrate the efficiency of DS3 services as compared to DS1 services, and show the declining unit investment associated with increasing volumes of DS3 circuits to a particular customer premises. In short, there is already data in the public record proving that transport costs decline directly with volume.

MFS' filing is most notable for what it does not contain. It does not present any evidence that the LECs' prices are below cost. At most, its data demonstrate price differences relating to volume and density of traffic, but cost-based price differences are not unlawful, or even harmful. It does not allege that the LECs' prices are below those of MFS or the other CAPs, which one would expect if the LECs were trying to drive out competition. It does not mention the fact that the pricing practices it criticizes, such as volume and term discounts and hubbing, are common among the CAPs. In Docket 92-13, the NYNEX Telephone Companies demonstrated that the CAPs have achieved a 36 percent share of the market for DS1 equivalent Special Access services in Manhattan even without expanded interconnection to interstate services. This shows that the NTCs' pricing practices are not harming competition and that the competition provided by MFS and the other CAPs is healthy and growing.

In Docket 91-141, the Commission proposed to require expanded interconnection, in part, because it believed that increased competition would result in lower rates. Now, on the eve of the Commission's decision in that docket, MFS proposes pricing restrictions on the LECs that can only result in higher costs to consumers. Clearly, such restrictions would not be in the public interest.

The lack of information about the CAPs' pricing practices leaves the Commission at a severe disadvantage in determining whether the LEC rates and rate structures are reasonable, and in evaluating the extent of competition in the exchange access

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market. The only way for the Commission to develop a real understanding of competition in the local exchange market is to require the CAPs to submit rate information. The LECs already provide such information in their published tariffs. It is not only fair, but essential, that the Commission obtain similar information from the CAPs. Therefore, the Commission should require in Docket 92-13 that the CAPs begin to provide to the Commission rate sheets by service and geographic area.

Similarly, the lack of market share data seriously hampers the Commission's efforts to evaluate the competitiveness of various LEC markets. As NYNEX has previously pointed out in ex-parte comments associated with Docket 91-141, this need for market share data can best be accomplished by requiring the LECs and the IXCs who qualify for USF payments to submit demand data by LATA as outlined in the attached format.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Evans". The signature is fluid and cursive, with a large initial "R" and a trailing "Evans".

Attachment

cc: Parties listed on the attached page

cc: Chairman Alfred C. Sikes
Commissioner James H. Quello
Commissioner Sherrie P. Marshall
Commissioner Andrew C. Barrett
Commissioner Ervin S. Duggan
Robert M. Pepper
Robert L. Pettit
Cheryl Tritt
Kathleen B. Levitz
James D. Schlichting
Gregory J. Vogt
Mary L. Brown
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Claudia R. Pabo
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Charla Rath
Madelyn Kuchera
Bill Harris
David Sieradski
Sarah Siedman
Suzanne Tetreault
Melissa Newman
BellSouth Telephone Companies
MFS
AT&T
Bell Atlantic Corporation
GTE Telephone Companies
Ameritech
US Sprint Communications Corp.
United States Telephone Assn.
Competitive Telecommunications Assn.
Southwestern Bell Telephone Co.
Central Telephone Company
Southern New England Telephone Co.
U S West, Inc.
MCI Telecommunications Corp.
ALTS
Williams Telecommunications Group, Inc.
The Association of American Railroads
Utilities Telecommunications Council
Teleport Communications, Inc.
The United Telephone System Companies
United States Small Business Administration
Intermedia Communications of Florida, Inc.
National Telecommunications & Information Admin.
Department of Justice
Bay Area Teleport
Electric Lightwave

FOR THE COMMISSION TO EVALUATE THE EFFECTIVENESS OF ITS
DECISIONS ON EXPANDED INTERCONNECTION AND LOCAL EXCHANGE
COMPETITION - IT MUST BEGIN TO COLLECT MARKET DATA NOW

BY LATA
FACILITIES/SERVICES TERMINATING AT POPS

| | <u>LECS</u> | <u>ALL CAPS</u> | <u>DIRECT TO END USERS</u> |
|--------------------------------|-------------|---------------------|------------------------------------|
| NUMBER OF OPTICAL DS3 | | | |
| NUMBER OF ELECTRICAL DS3 | | | |
| NUMBER OF DS1 | | | |
| NUMBER OF VOICE GRADE CIRCUITS | | | |
| ORIGINATING MINUTES OF USE | | | |
| TERMINATING MINUTES OF USE | | | |

- ALL DATA SHOULD BE COLLECTED BY THE FCC BY LATA FROM THE IXCS WHO QUALIFY FOR USE PAYMENTS.
- LECS PROVIDE DATA IN COLUMN ONE.
- DATA REQUIRED SHOULD BE TREATED AS PROPRIETARY AND AGGREGATED BY THE FCC.
- COLUMN THREE INCLUDES FACILITIES NOT PROVIDED BY LECS OR CAPS.